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WEDNESDAY, JANUARY 30, 2008

VIA HAND DELIVERY

Ms. Celeste A. Baker
Assistant General Counsel (MC-101)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087 (mail)

CHIEF-CLERKS OFFICE

2008 JAN 30 PM 2:56

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Request that City of El Paso's Motion to Continue Commission Consideration of the Application and the City of El Paso's Supplement to the Motion to Continue Be Set on the February 8, 2008 Commissioners' Agenda Meeting, *Application of ASARCO Incorporated for Renewal of Air Quality Permit No. 20345*, TCEQ Docket No. 2004-0049-AIR, SOAH Docket No. 582-05-0593.

Dear Ms. Baker:

For the reasons addressed below, the City of El Paso (the "City") requests that its *Motion to Continue the Texas Commission on Environmental Quality's Consideration of the Application of Asarco Incorporated for Renewal of Air Quality Permit No. 20345* ("Motion to Continue") and its *Supplement to Its Motion to Continue the Texas Commission on Environmental Quality's Consideration of the Application of Asarco Incorporated for Renewal of Air Quality Permit No. 20345* ("Supplement to Motion to Continue") be set for Commissioner consideration and action at the February 8, 2008 Commissioners' Agenda meeting.

On Tuesday, January 22, 2008, the City filed its *Motion to Continue*. Specifically, the City requested that the Commissioners' continue their consideration of Asarco's renewal application until such time as certain issues identified in the *Motion to Continue* had been resolved. On Friday, January 25, 2008, in light of new public information that had just been released regarding the ownership and future operation of the Asarco El Paso Plant, the City filed its *Supplement to Motion to Continue*.

On Friday, January 25, 2008, all parties in this proceeding received correspondence from you, which identified that "[p]rior to those oral arguments or presentations [regarding the Asarco's application and related filings], the Commission will consider the City of El Paso's Motion to Continue the Commission's Consideration of the Application and its Supplement to

the Motion.”¹ Thus, the City understands that its *Motion to Continue* and its *Supplement to Motion to Continue* are currently scheduled to be heard by the Commissioners on February 13, 2008, the same day as the Commission’s consideration of Asarco’s renewal application.

As previously identified by the City in its *Motion to Continue* and in its *Supplement to Motion to Continue*, hundreds of people from the El Paso area currently are making plans to attend the Commission meeting on February 13, 2008. All of those hundreds of persons are very interested in the Commission’s final determination regarding Asarco’s renewal application, many of them having actively opposed issuance of the renewal permit for several years now.

While the final outcome of the permitting process is of very high importance to people living in the El Paso area, it is a hardship for the hundreds of people planning to attend the February 13, 2008 Commissioners’ meeting to travel to Austin for the meeting if the substantive issues surrounding permit denial or issuance are not addressed. The City of El Paso is approximately 600 miles from Austin, and making the trip requires planning, travel expenditures, missed days of work, and other hardships for the hundreds of people planning to attend the February 13 meeting.

While all of these people would like to be present for the Commission’s consideration of any and all issues related to this proceeding to demonstrate their ongoing opposition to the permit renewal, traveling the great distance to Austin involves the hardships and difficulties identified above, and the City’s *Motion to Continue* and *Supplement to Motion to Continue* are, in effect, scheduling requests. They do not address the substantive arguments regarding denial or issuance of the renewal application.

The City believes that the reasons presented for continuance, especially the information addressing the real uncertainty regarding the future operation of the Asarco El Paso Plant, justify hearing the City’s *Motion to Continue* and the City’s *Supplement to Motion to Continue* on February 8, 2008, thus allowing the procedural motions to be heard and acted on prior to the hundreds of people spending the time and resources necessary to travel to Austin. In this case, the Commission is in the unique position of having a Commissioners’ Agenda meeting already scheduled for Friday, February 8, 2008. Thus, the pending procedural motions could be heard a short five days before the Commission’s scheduled consideration of the substantive issues surrounding the renewal application and related pleadings. Hearing the procedural motions on an earlier date would ensure that the citizens of the El Paso area expended their time and resources to travel to Austin to hear the substantive issues that they so greatly care about.

The City has conferred with counsel for the Sierra Club, who also acts as the designated representative for those parties aligned with Sierra Club, and counsel for the Sunset Heights ACORN group. Both counsel support the City’s request to set the *Motion to Continue* and the

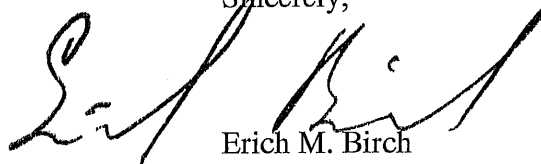
¹ Memorandum from Ms. Celeste A. Baker, Assistant General Counsel, Tex. Comm’n on Env’tl. Quality, to Persons on Attached Mailing List, TCEQ Docket NO. 2004-0049-AIR, SOAH Docket No. 582-05-0593 (Jan. 25, 2008).

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Supplement to Motion to Continue on the February 8, 2008 Commissioners' Agenda meeting. As such, the City respectfully requests that the Office of General Counsel set the City's *Motion to Continue* and the City's *Supplement to Motion to Continue* for Commissioner consideration and action on the February 8, 2008 Commissioners' Agenda meeting.

I certify that by copy of this letter I am hereby forwarding this letter to the persons on the attached mailing list for this proceeding. If you have any questions, please telephone me at (512) 258-9199.

Sincerely,

A handwritten signature in black ink, appearing to read "Erich M. Birch", with a stylized, cursive script.

Erich M. Birch

cc: Mailing List
Mr. Charlie McNabb, City Attorney
Ms. Laura Prendergast Gordon, Deputy City Attorney

MAILING LIST
TCEQ Docket No. 2004-0049-AIR
SOAH Docket No. 582-05-0593

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